

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SIXTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION No. 9761 of 2004

Between:

M.Vijayalakshmi, W/o.Satyanarayana,
Shop No.55, Eluru Town,Eluru W.G.Dist.

..... PETITIONER

AND

- 1 Joint Collector, West Godavari District at Eluru.
- 2 Revenue Divisional officer, Eluru, W.G.Dist.
- 3 Mandal Revenue officer, Eluru,W.G.District.
- 4 M.Sudarshani, W/o.Muralikrishna,
Shop No.119, Eluru Town,Eluru W.G.Dist.

5 R. Nageswara Rao, S/o,Narayana Swamy,

Kothapet, Eluru. **.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of mandamus, or any other appropriate writ, order or direction declaring the action of the 1st respondent in passing the impugned order in Roc.No.CS-1/402/2004, dt.9-6-2004 in setting aside the order of the 3rd respondent ROC.1099/2004-4(C.S), dt.16-5-2004 by detaching the Kerosene quota from F.P.shop No.55 of Eluru town as illegal, arbitrary and violative of principles of natural justice and further directing the respondents to drop all further proceedings pursuant to the orders of the 1st respondent and pass.

Counsel for the Petitioner: MR.CH.DHANAMJAYA

Counsel for Respondents 1 to 3: G.P. FOR CIVIL SUPPLIES

Counsel for Respondent No.4 : None.

Counsel for Respondent No.5 : Smt.D.LALITHA PRASAD

The Court at the admission stage made the following :

-
-
-
-
-
-
-
-

ORAL ORDER:

-

The writ petitioner is the fair price shop dealer in respect of Shop No.55 of Eluru town. She has been distributing the commodities such as Rice and Sugar. However, so far as Kerosene is concerned, the same is being distributed through the hawker, the fifth respondent herein. While so, the dealer of fair price shop No.95 of Komadavolu village, Eluru Mandal died and the dealer of fair price shop No.119, the fourth respondent herein, has been kept in-charge for distribution of commodities to the cardholders. It appears that the petitioner made a representation to the second respondent, Revenue Divisional Officer, stating that since she is only distributing Rice and Sugar to the cardholders, the shop is not viable and, therefore, she may be permitted distribution of Kerosene also through her shop and the Hawker (5th respondent) attached to her shop may be tagged on to Shop No.95. As per the directions of the Revenue Divisional Officer, the Mandal Revenue Officer having conducted necessary enquiry and having found that the petitioner is not earning sufficient income as she is being allotted only Rice and Sugar, passed an order dated 16-5-2004 attaching the 5th respondent Hawker to Shop No.95 of Komadavolu for distribution of Kerosene and directing that the petitioner shall distribute the Kerosene to card-holders of Shop No.55 which was hitherto being distributed by the Hawker. The said arrangement has been implemented with effect from 1-6-2004. In the meanwhile, the fourth respondent who is the dealer of fair price shop No.119, and who has been kept in-charge of fair price shop No.95 filed an appeal before the Joint Collector challenging the proceedings of the Mandal Revenue Officer dated 16-5-2004. It is also relevant to note that the fourth respondent filed W.P.No.9249 of 2004 challenging the very same proceedings

dated 16-5-2004. This Court, by order dated 25-5-2004, dismissed the said writ petition at the stage of admission. However, this Court directed the Joint Collector to proceed with the appeal of the fourth respondent and pass appropriate orders within a period of three weeks. In pursuance thereof, the Joint Collector, passed an order dated 9-6-2004 setting aside the order of the Mandal Revenue Officer dated 16-5-2004 and directing that the original allotment of Kerosene prior to the orders issued by the Mandal Revenue Officer shall be restored to the respective fair shops and hawker. The said order is under challenge in this writ petition.

I have heard the learned counsel for the petitioner as well as the learned counsel appearing for the fifth respondent and the learned Government Pleader for the respondents 1 to 3. In spite of service of notice, the fourth respondent has not entered appearance.

The learned counsel for the petitioner contended that the proceedings dated 9-6-2004 which have been passed without notice to the petitioner cannot be sustained and liable to be set aside. Learned counsel for the fifth respondent, though admitted that the impugned order was passed without notice to the petitioner, contended that since the Joint Collector has merely maintained *status quo* ante, it cannot be said that the said order suffers from any infirmity and, therefore, it does not warrant any interference.

I have gone through the impugned order dated 9-6-2004 as well as the order passed by the Mandal Revenue Officer dt. 16-5-2004. It is clear that in pursuance of a representation made by the petitioner the order dated 16-5-2004 has been passed by the Mandal Revenue Officer on the basis of his finding that Shop No.55 is not viable since the dealer was being allotted only Rice and Sugar. Admittedly, so far, no temporary appointment has been made in respect of Shop No.95 and the 4th respondent has been placed as incharge dealer. That being so, in view of the said order tagging on the Kerosene quota to F.P. Shop No.55, the petitioner acquired a right to distribute the Kerosene and before setting aside the same, for any reason whatsoever, the Joint Collector ought to have issued a notice to her to be in conformity with the principles of natural justice. Since admittedly, no notice has been issued to the petitioner, before setting aside the order dated 16-05-2004, I am of the view that the matter requires reconsideration by the Joint Collector.

Accordingly, the impugned order dated 9-6-2004, which is in violation of the

principles of natural justice is set aside and the Joint Collector, West Godavari District, Eluru, the first respondent herein, is directed to consider the matter afresh and to pass appropriate orders in accordance with law after hearing the petitioner, fourth respondent as well as the fifth respondent. Such exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order. Till then, the order of *status quo* granted by this Court on 17-6-2004 shall continue.

The writ petition is accordingly disposed of. No costs.

-

-

-

26th July 2004.

ARS

-

-

To

- 1 Joint Collector, West Godavari District, Eluru.
- 2 Revenue Divisional officer, Eluru, W.G.Dist.
- 3 Mandal Revenue officer, Eluru, W.G.District.
- 4 2 CCs to Govt. Pleader for Civil Supplies, High Court Bldgs.,

Hyderabad (OUT)

5 2CD copies.